It has been held that even where the evidence is entirely circumstantial, an instruction on circumstantial evidence is not necessary. *Brady* v. *Commonwealth,* 74 Ky. 282, that it is not error to so charge when instructions have been given as to reasonable doubt. *Solander* v. *People,* 2 Colo. 48, *Jones* v. State, 61 Ark. 88, that it is a matter in the discretion of the court and no error is committed unless instructions are given that may mislead. *State* v. *Roe,* 12 Vt. 93. But on the other hand, it is held that where the testimony is entirely circumstantial, it is the duty of the court to charge upon the law of that subject. *People* v. *Scott,* 10 Utah 217. In cases where the facts are almost identical with the facts in the main case, it was held that such an instruction was necessary. *Fuller* v. *State,* 24 Tex. App. 596, *Guagardo* v. *State,* 24 Tex. App. 603. *In Coleman* v. *State,* 87 Ala. 14, and *Rains* v. *State,* 88 Ala. 91, the court held that as there was some direct and positive evidence, an instruction on circumstantial evidence was therefore not required. In the main case the evidence was not direct, and even granting that the defendant did not purchase the cattle from Jackson, still the state must rely on circumstantial evidence to convict, and it would seem, according to the previous decisions of the same court, that such an instruction was necessary. The dissenting opinion would seem to be the better one.

EVIDENCE—RES GESTAE.—In a prosecution for homicide, evidence that within 15 or 20 minutes after the difficulty, deceased said to witness, "What a pity! They killed me for nothing," was admissible as part of the res gestæ. *Wilson* v. *State* (1915), — Tex. —, 90 S. W. Rep. 312.

It has been said that there are few problems in the law of evidence more unsolved than what things are to be embraced in those occurrences that are designated in the law as "res gestæ." *Hunter* v. *State,* 40 N. J. L. 495. It is impossible to make the time that has elapsed since the event a test. The transaction in question may be such that the res gestæ would extend over a day, or a week, or a month. *Jack* v. *Mutual Life Ass'n,* 113 Fed. 49. It has been held that a declaration made thirty minutes after the transaction is purely narrative and cannot be admitted. *Waldele* v. *R. R.,* 95 N. Y. 274. But declarations made two days after the transaction had been admitted as part of the "res gestæ." *People* v. *Brown,* 53 Mich. 531. It has been said that the admissability of such a declaration must be determined by the judge according to the degree of its relation to that fact, and in the exercise of a sound discretion; it being extremely difficult, if not impossible, to bring this class of cases within the limits of a more particular description. *R. R.* v. *O'Brien,* 119 U. S. 99. Precedents seem to be of little value in determining whether such a declaration may be admitted. It is admitted that great care should be used in the admission of such declarations, but the tendency seems to be to leave the matter to the discretion of the trial court.

MASTER AND SERVANT—FELLOW SERVANTS.—Plaintiff's intestate, a car inspector, was killed through the negligent acts of a train crew. *Held,* that a yard master, a brakeman and a conductor are fellow servants of a car inspector. *Shuster* v. *Philadelphia B. & W. R. Co.* (1905), — Del. —, 62 Atl. Rep. 689.

The rule as laid down by the court is undoubtedly the settled rule when applied to cases where the *inspector* is killed or injured. 2 LABATT, MASTER & SERVANT, 1370, and cases cited, though the court in the principal case seems to have been unfortunate in its citation of cases on this point. *Wheatley* v. *R. R.*, 1 Marv. 305, 30 Atl. 660. Is the case of a brakeman of one train and the fireman of another train which he, the brakeman, was signalling, and *Creswell* v. *R. R.*, 2 Pennewill 210, 43 Atl. 629, where a brakeman was killed through the negligence of the train crew. There is not, however, unanimity as to the doctrine referred to. *Railroad* v. *Hoyt*, 122 Ill. 369, which evidently overrules *Valtez* v. *R. R. Co.*, 85 Ill. 500; also *Louisville & Northern R. R.* v. *Lowe*, 25 Ky. L. R. 2317, 80 S. W. 768. (1904). Both of which hold that an inspector is not a fellow-servant with the members of a train crew.

But when a member of a train crew is injured through the negligence of a car inspector, the fellow servant rule does not usually apply as the rule of non-assignable duty, i. e., the duty to properly inspect comes in here. See the well considered case of *McDonnald* v. *Mich. Cent. R. R.* (1903), 132 Mich., 372, 93 N. W. 1041, which apparently overrules *Smith* v. *Potter*, 46 Mich. 258, 9 N. W. 273, 41 Am. Rep. 161, 2 LABATT MASTER & SERVANT, p. 1614. The principal case does not make the distinction here pointed out but it is necessary to a reconciliation of the cases. The Colorado statute referred to in 4 MICH. LAW REVIEW 488, indicates a tendency in the right direction when the refinements of the fellow servant rule are taken into consideration.

MUNICIPAL CORPORATIONS — CONTRACTS — PROPOSAL — ACCEPTANCE. — The town council adopted a resolution authorizing the president and town clerk to execute a contract with a city for a supply of water for the town on certain terms. The authorities of the city, without having been officially notified of the resolution, prepared and executed, on their part, a paper which they claimed to be a contract in accord with the terms of the resolution. This was presented to the town for execution, but the proper officers refused to execute it, and the town council adopted an ordinance rescinding the former resolution. On suit by the city against the town, *Held*, that there was no binding contract and the rescinding ordinance was valid. *Mayor, etc., of Jersey City* v. *Town of Harrison* (1905), — N. J. —, 62 Atl. Rep. 765.

The contention on the part of the plaintiffs was that the resolution of the town council was a proposition for a contract and that the paper executed by the city and tendered for execution to the town made up a contract in writing. There is good authority for this position, where the ordinance or resolution purports to be a direct offer to the other party or an acceptance of the offer of another previously made, the written record of the ordinance signed by the clerk and a written acceptance signed by the other party being regarded sufficient written memorandum to satisfy the statute of frauds. *People* v. *Board of Supervisors*, 27 Cal. 655; *Argus Co.* v. *City of Albany*, 55 N. Y. 495; *Wade* v. *City of Newbern*, 77 N. C. 460. The defence in the principal case is that the ordinance was not intended to be a contract, an offer, or an acceptance, but merely an authorization of certain officers to make a contract, and that it was not communicated to the plaintiff. This seems a good defence.